

# AMERICAN SMELTING AND REFINING COMPANY v. UNITED STATES.

## APPEAL FROM THE COURT OF CLAIMS.

No. 221. Argued April 25, 1922.—Decided May 15, 1922.

1. A contract made during war for war material to be delivered by a specified date, which was as early as delivery would be practicable under the circumstances, is within the exception of Rev. Stats., § 3709, dispensing with advertising for purchases when public exigencies require immediate delivery. P. 78.
2. The formalities of Rev. Stats. § 3709, are to protect the United States, not the seller. P. 78.
3. The fact that an offer and an acceptance by correspondence are both made in express contemplation of a more formal document to follow does not prevent their constituting a contract. P. 78.
4. At a time when a price for copper to the Government had been fixed under Act of August 29, 1916, c. 418, § 2, 39 Stat. 649, claimant received from the War Department a proposal in writing for delivery of a stated amount at that price before a certain date under shipping orders to be supplied by the Department and accepted it in writing at the Department's request and upon its advice that no payment could be made without such acceptance. *Held:*
  - (a) A contract, and not a requisition under the National Defense Act of June 3, 1916, c. 134, § 120, 39 Stat. 213, which authorized, in addition to purchase, the obtaining of material by compulsory orders, for a fair and just compensation. P. 78.
  - (b) The claimant, having completed deliveries after alleged delays in shipping orders and after the government price had been increased under the Act of August 29, 1916, *supra*, could not, in respect of such deliveries, claim freedom from the contract because